

STATE'S RESPONSE TO MOTION TO SEVER

Codefendants were indicted together and should be tried together; offenses are based on the same conduct and are "closely connected" in their commission.

The State of Arizona, by and through undersigned counsel, hereby requests that the court deny the defendant's Motion to Sever for the reasons set out in the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The State opposes the Defendant's motion for severance for the following reasons:

- 1) The two codefendants' charges are joined pursuant to Rule 13.3(b), Ariz. R. Crim. P., because they are both charged with some of the same offenses, and their offenses are "so closely connected that it would be difficult to separate proof of one from proof of the others."
- 2) Severance is not necessary to promote a fair determination of guilt or innocence.
- 3) The defendant will not suffer prejudice from joining these defendants and offenses.

FACTS

On June 23, 1995, Detective K. Phillips of the Chandler Police Department arrived at Chandler Regional Hospital to investigate allegations of child abuse. A physician was in the emergency room treating the victim, Laileng Julin. Laileng had visible lacerations to both of her feet, both ankles, and both lower legs. She told Detective Phillips that she was afraid of her mother beating her and that was why she had run away from home.

Laileng told detective Phillips that her mother, Swee Julin, had been abusing her since March 1995 by using a meat cleaver to cut lacerations on her feet and lower legs. Laileng also said that her father, Anthony Julin, knew about the abuse that took place

and never sought medical attention for her or stopped the abuse from occurring. On examination of the wounds on Laileng's feet and legs, Detective Phillips noticed at least twenty separate lacerations.

Defendant Phillips interviewed defendant Anthony Julin. Anthony Julin described the knife used to cut Laileng as a standard meat cleaver with a metal blade approximately 7 inches long by 3 inches wide. He was uncertain how many separate occasions Swee cut Laileng with the knife and could not explain why he failed to seek medical attention for Laileng's injuries.

Defendant Anthony Julin is charged with two counts of child abuse, each a class 2 felony and dangerous crime against children, in Counts IV and V of the indictment. These counts are identical to counts II and III against co-defendant Swee Julin, and refer to the same incidents. The defendant was aware of the abuse that his daughter Laileng suffered and failed to protect her or obtain medical treatment.

ARGUMENT

Severance is not required when the joinder is proper. Rule 13.3, Arizona Rules of Criminal Procedure provides, in pertinent part:

b. Defendants. Two or more defendants may be joined when each defendant is charged with each offense included, or when the several offenses are part of a common conspiracy, scheme or plan or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.

The Arizona Supreme Court has noted that, "although there is some possibility of confusion in a joint trial, in the interest of judicial economy, joint trials are the rule rather than the exception." *State v. Van Winkle*, 186 Ariz. 336, 339, 922 P.2d 301, 304 (1996);

State v. Murray, 184 Ariz. 9, 25, 906 P.2d 542, 558 (1995), citing *United States v. Camacho*, 528 F.2d 464, 470 (9th Cir. 1976).

Defendants who are jointly indicted should be jointly tried. When multiple defendants are charged with the same offense, which can be proved by the same evidence, the cases against each defendant may be joined for trial. In *State v. Grannis*, 183 Ariz. 52, 900 P.2d 1 (1995), Grannis and Webster were charged with murder, theft, and trafficking. The State moved for joint trials, arguing that joint trials “would save time and money because the co-defendants would not present antagonistic defenses, the evidence against them was identical, and many witnesses were from out of state.” *Id.* at 59, 900 P.2d at 7. After the trial court ordered the State not to introduce any of Webster's statements that incriminated Grannis, the court held a joint trial. On appeal, Grannis argued that he was prejudiced by the joint trial. The Arizona Supreme Court noted that Rule 13.4(a), Ariz. R. Crim. P., requires a court to sever the trials of defendants if “necessary to promote a fair determination of the guilt or innocence of any defendant of any offense.” In exercising its sound discretion to grant or deny a severance motion, the trial court must balance the possible prejudice to the defendant against the interests of judicial economy. *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473 (1983). When a defendant challenges the trial court's failure to grant a severance, he “must demonstrate compelling prejudice against which the trial court was unable to protect.” *Id.*

The *Grannis* Court stated:

Cases have generally held that a defendant is prejudiced to such a significant degree that severance is required when: (1) evidence admitted against one defendant is facially incriminating to the other defendant; (2) evidence admitted

against one defendant has a harmful “rub-off effect” on the other defendant; (3) there is a significant disparity in the amount of evidence introduced against each of the two defendants; or (4) co-defendants present defenses that are so antagonistic that they are mutually exclusive, or the conduct of one defendant's defense harms the other defendant. Sometimes, however, a curative jury instruction is sufficient to alleviate any risk of prejudice that might result from a joint trial.

State v. Grannis, 183 Ariz. 52, 58, 900 P.2d 1, 7 (1995) [citations omitted]. The Court found that Grannis's case did not fit into any of those four categories. None of the evidence admitted against Webster facially incriminated Grannis, and the witnesses were admonished to exclude from their testimony any statements that Webster made about Grannis. Second, Grannis suffered no rub-off effect. “Severance is rarely granted when a defendant alleges that the jury's unfavorable impression of his co-defendant, against whom evidence is properly admitted, will influence the way the jurors view the defendant himself.” *Id.*, citing *State v. Lawson*, 144 Ariz. 547, 555, 698 P.2d 1266, 1274 (1985). Any potential problems were averted by a jury instruction requiring the jurors to consider the evidence presented against each defendant separately. Third, basically the same the amount of evidence was offered against each codefendant -- although, even if there is a disparity in the amount of evidence offered against each codefendant, “severance is required only if the jury is unable to ‘compartmentalize the evidence as it relates to separate defendants.’ *United States v. Singer*, 732 F.2d 631, 635 (8th Cir.1984), quoting *United States v. Jackson*, 549 F.2d 517, 525 (8th Cir.1977).” *State v. Grannis*, 183 Ariz. 52, 59, 900 P.2d 1, 8. The *Grannis* Court found that the jury could compartmentalize the evidence as it related to each defendant. Fourth, Grannis and Webster did not present antagonistic defenses. Webster alleged that he killed the victim

in self-defense, while Grannis contended that he was not present during the murder. “There is nothing contradictory about these defenses, so the jury could easily believe all the evidence offered on behalf of each defendant.” *Id.* Finally, the Court found that the “actual conduct” of Webster's defense did not prejudice Grannis. *Id.*

In deciding whether to grant a motion to sever, the trial court weighs the possible prejudice to the defendant against the interests of judicial economy. *State v. Mauro*, 149 Ariz. 24, 27, 716 P.2d 393, 396 (1986), citing *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473 (1983). In this case, severance would be contrary to the interests of judicial economy because the evidence against this defendant is exactly the same as that against the co-defendant (except on Count I, in which this defendant is not charged). While each defendant played a different role in this crime, that in itself is not a reason for severance. The result of severance would be two trials involving exactly the same evidence, because this defendant's crime is his failure to protect his daughter from the abuse his codefendant was inflicting. Therefore, the two codefendants should be tried jointly.

CONCLUSION

In the instant case the defendants are properly joined for trial under Rule 13.3 and severance is not a right. In balancing prejudice to the defendant against the interest of judicial economy, it is clear that justice would be served by keeping the defendants and the counts joined. “Joinder cannot be resisted simply on the ground that proof of guilt on one charge will make the trier more likely to find guilt on the other charge.” *Anderson v. State*, 155 Ariz. 289, 290, 746 P.2d 30, 31 (App. 1987). Moreover, severance is not necessary to promote a fair determination of guilt or innocence

because all of the evidence that the State will present against Swee Julin will also be admitted against this defendant.

Therefore, the State respectfully requests the court to deny defendant Anthony Julin's motion to sever his case from the codefendant's case.